

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

- - -

IN RE: AUTOMOTIVE PARTS Master File No. 12-md-02311  
ANTITRUST LITIGATION Hon. Marianne O. Battani

STATUS CONFERENCE

BEFORE THE HONORABLE MARIANNE O. BATTANI  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Wednesday, July 10, 2013

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1 Detroit, Michigan

2 Wednesday, July 10, 2013

3 at about 11:06 a.m.

4

— — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: All rise.

7 The United States District Court for the Eastern  
8 District of Michigan is now in session, the Honorable  
9 Marianne O. Battani presiding.

10 You may be seated.

11 THE COURT: Good morning.

12 ATTORNEYS: (Collectively) Good morning.

13 THE COURT: How nice to see all of you again. I  
14 see the defendants are in the right spot. Don't you wish in  
15 every trial you could be there? Okay. Excuse me. This is  
16 all from yesterday's trial so let me get rid of all of this.  
17 It's not that we weren't expecting you, it is just sometimes  
18 we forget the basics like clearing off the bench.

19 Okay. You all, I take it, have received the agenda  
20 and have reviewed it, so let's just go ahead and start.

21 Number one, wire harness, who is -- Mr. Fink?

22 MR. FINK: Yes.

23 THE COURT: Again, please put your appearances on  
24 the record as you speak each time.

25 MR. FINK: Thank you, Your Honor. David Fink on

1     behalf of direct purchaser plaintiffs, liaison -- interim  
2     liaison counsel.

3             The first item, although it states service  
4     completed, just for the fun of it last night our office filed  
5     another complaint so that service isn't quite complete and,  
6     if I may, on items A and B Greg Hansel will speak to those.

7             THE COURT: All right. Mr. Hansel?

8             MR. HANSEL: May it please the Court, good morning,  
9     Your Honor.

10            THE COURT: Good morning.

11            MR. HANSEL: Greg Hansel, one of the interim lead  
12     counsel for direct purchaser plaintiffs.

13            So as Mr. Fink mentioned, last evening the direct  
14     purchasers filed a complaint that relates to the wire harness  
15     part and it names a new group of defendants that the direct  
16     purchaser plaintiffs had not named before but the end payors  
17     and the auto dealer had named, and that's GS Electech group  
18     of defendants. There are three defendants, GS Electech,  
19     Inc., GS Wiring Systems, Inc. and GSW Manufacturing, Inc.  
20     The case has a number, it is 2:13-CV-12965-NGE. That was  
21     filed yesterday.

22            We have not served that complaint yet, and so the  
23     purpose of mentioning it is simply to update the Court and  
24     service is not completed as to that newly-filed complaint.

25            THE COURT: Is there somebody from GS Electech,

1 defendant?

2 MR. BARNES: Yes, Your Honor.

3 THE COURT: And you were served with -- not with  
4 this one but the other plaintiffs; is that correct?

5 MR. BARNES: That's correct.

6 THE COURT: In the wire harness. Okay. And are  
7 you working on -- working out service or -- I'm sorry, your  
8 name?

9 MR. BARNES: Donald Barnes, B-A-R-N-E-S.

10 THE COURT: I have a cousin Donald Barnes. Okay.

11 MR. BARNES: I hope he's behaved himself.

12 THE COURT: Okay.

13 MR. HANSEL: Your Honor, we have contacted  
14 Mr. Romano's office, Mr. Barnes' co-counsel for GS Electech,  
15 and requested that they accept service. We have not heard  
16 back. We will continue to follow up with that.

17 MR. BARNES: Your Honor, if I may?

18 THE COURT: Yes. Why don't you come to the  
19 microphone?

20 MR. BARNES: Sure. Mr. Romano unfortunately has  
21 had some very serious medical problems. He recently had a  
22 kidney removed, he had a kidney tumor, a cancerous tumor. He  
23 currently has an inoperable tumor on his liver. He was  
24 readmitted to Johns Hopkins last night. I have no doubt that  
25 perhaps counsel called him and left a voicemail, but he

1 hasn't been in his office for a number of months. He did  
2 come in for a few days earlier this week.

3 So I apologize to counsel for the lack of  
4 response --

5 MR. HANSEL: Understood.

6 MR. BARNES: -- but that's the reason.

7 Mr. Romano will probably be incapacitated for some  
8 time.

9 THE COURT: Okay. So you will be basically as  
10 co-counsel taking his place, and any stipulations you can  
11 work out will be between the two of you?

12 MR. BARNES: We'll be happy to talk to the  
13 plaintiffs as we always are.

14 THE COURT: Okay. I am wondering now that we are  
15 adding new defendants we have another round of motions. I  
16 guess you have to look at it, you don't even know yet.

17 MR. BARNES: I haven't seen the complaint yet, Your  
18 Honor.

19 THE COURT: You haven't seen it, right?

20 MR. BARNES: It is possible, it's very possible.

21 THE COURT: Okay. All right. If we need motion  
22 dates -- well, we will know because we will get the motion  
23 but we will have to work on that because this is an  
24 additional one. Okay.

25 MR. HANSEL: All right. Thank you, Your Honor. I

1 believe that covers the service item.

2 Then moving down to B, which is an update on the  
3 stipulations between plaintiffs --

4 THE COURT: Can we hold that off because we have a  
5 government motion which we will take in just a minute --

6 MR. HANDSEL: Certainly.

7 THE COURT: -- and I think that this will affect  
8 it, but before you sit down, Mr. Hansel, let's talk about --  
9 let's see, the answers are due July 31st.

10 Is that -- who is speaking for defendants here,  
11 anybody?

12 MS. FISCHER: Michelle Fischer, I'm representing  
13 Yazaki. I will speak on behalf of the defendants.

14 For the end payors and the direct purchasers,  
15 answers are due --

16 THE COURT: Why don't you come down here so we  
17 can -- I just want to make sure that the record is clear.

18 MS. FISCHER: Thank you, Your Honor. For the  
19 direct purchasers and the end payors, we have agreed to  
20 answer the currently-existing complaints as conformed to the  
21 Court's order by July 31st. We have worked out an  
22 arrangement with the auto dealers in connection with the  
23 agenda item relating to their motion for leave --

24 THE COURT: Yes.

25 MS. FISCHER: -- that will affect the answer date

1 for that particular complaint.

2 THE COURT: Just stay right there but let's talk  
3 about the motion for leave.

4 Mr. Hansel, do you have -- or who is doing that?  
5 Okay.

6 MS. ROMANENKO: Good morning, Your Honor.  
7 Victoria Romanenko for dealership plaintiffs.

8 We have been in communication with the defendants  
9 since the filing of our motion for leave to file our  
10 second-amended complaint, and we believe we have reached an  
11 agreement. Dealership plaintiffs have agreed to withdraw our  
12 request to add the only three new state law damages claims  
13 that we were seeking to add beyond --

14 THE COURT: Wait a minute. Could you slow down,  
15 and pull that microphone down a little so everybody can hear  
16 you in the back. Okay. I'm sorry. Could you repeat that?

17 MS. ROMANENKO: Sure. Dealership plaintiffs have  
18 agreed to withdraw our request to add the only three new  
19 state law damages claims that we were seeking to add in the  
20 second-amended complaint beyond those that we asserted in the  
21 first wire harness complaint, and those are under the  
22 consumer protection laws of New Mexico, North Carolina and  
23 New York. And defendants have agreed that they will not  
24 oppose our motion for leave to amend, and provided Your Honor  
25 grants our motion they will not file any motions to dismiss



1 and will answer our second-amended complaint 30 days from the  
2 time that we file a clean copy.

3 So what we would request is that we submit a copy  
4 of our second-amended complaint to Your Honor with those  
5 three claims removed and then 30 days from the time that that  
6 is entered, provided Your Honor agrees to enter it, the  
7 defendants will file an answer. We have also agreed to serve  
8 a Japanese translation of that version of the complaint on  
9 the defendants when it is ready, and nothing else will be  
10 affected.

11 THE COURT: Okay. Do you want to respond to that?

12 MS. FISCHER: That's an accurate summary. I  
13 believe the auto dealers' second-amended complaint will also  
14 reflect the notice that they filed the other day wherein they  
15 dropped the new Leoni entity and all allegations relating to  
16 that entity.

17 THE COURT: All right.

18 MS. FISCHER: So the clean copy will simply reflect  
19 all changes they have agreed to since --

20 THE COURT: Okay. So I have a proposed order, why  
21 don't you submit another order allowing the amended complaint  
22 attaching the clean copy of the new claim?

23 MS. ROMANENKO: Okay.

24 THE COURT: And then in terms of the briefing  
25 schedule for the 1292(B) motions?

1 MR. PERSKY: Yes. I'm Bernard Persky of the  
2 Robins, Kaplan firm, interim co-lead counsel for the end  
3 payors.

4 We have entered into a stipulated briefing schedule  
5 which I think the Court has so ordered. Our answering papers  
6 are due July 22, and Lear's reply is due August 15.

7 And I guess there is one other matter on the remand  
8 motion which isn't before the Court, but the -- Lear has made  
9 a motion before the bankruptcy court for additional relief.

10 THE COURT: Is this Lear?

11 MR. PERSKY: This is Lear's counsel, and I guess  
12 they will decide --

13 THE COURT: Let's let him speak then, Mr. Persky.

14 MR. MAROVITZ: Good morning, Your Honor.  
15 Andy Marovitz on behalf of Lear.

16 Two things. First, Mr. Persky accurately stated  
17 the briefing schedule. The only addition I would request on  
18 that is that the Court schedule oral argument on the motion  
19 for the same date that it schedules oral argument upcoming on  
20 instrument panel clusters because the plaintiffs will  
21 presumably be here for those motions, we will come in and we  
22 will argue it then if that would be convenient for the Court.

23 THE COURT: Well, I don't know that I need oral  
24 argument on 1292. My intent is to do that on briefs.

25 MR. MAROVITZ: Okay.

1           THE COURT: So unless there is something that you  
2 think is more unusual or some strong reason to have oral  
3 argument I don't see any need for it.

4           MR. MAROVITZ: Thank you, Your Honor. We will wait  
5 to see the plaintiffs' brief, which we haven't seen yet, it  
6 is not due yet, and then in our response if we think there is  
7 anything unusual that would require oral argument we will  
8 indicate that for the Court.

9           In connection with Mr. Persky's point about the  
10 remand, the Court may remember that there is a parallel  
11 proceeding going on in the Southern District of New York.  
12 Judge Forrest had remanded that part of the case, which is a  
13 bankruptcy issue, back to the bankruptcy court with two  
14 questions to be addressed by the parties. Lear has filed its  
15 brief in response to that remand from Judge Forrest. The  
16 plaintiffs will have an opportunity to file their response,  
17 Lear will file a reply, and presumably there will be  
18 argument.

19           THE COURT: Is that going to interfere in any way  
20 with what we are doing here with our motions?

21           MR. PERSKY: It might depend on what the bankruptcy  
22 judge decides. The bankruptcy judge had initially decided to  
23 defer to the MDL court on certain issues. That was taken on  
24 appeal to the district court. Judge Forrest had reversed the  
25 order of the bankruptcy court and said no, some of the issues

1 raised are core bankruptcy issues and she remanded to  
2 bankruptcy Judge Gropper two questions concerning the  
3 scope -- potential scope of Lear's liability with respect to  
4 the liability occasioned by postdischarge conduct, and if  
5 they are guilty of unlawful conduct postdischarge under what  
6 circumstance can their liability extend backwards to the  
7 conduct of either themselves prior to the discharge or their  
8 co-conspirators? So two questions remain for the bankruptcy  
9 judge to determine, but there is no -- right now that has not  
10 yet been determined and that has to be fully briefed, but I  
11 don't see any reason why the 1292(B) shouldn't go forward and  
12 that should be resolved.

13 MR. MAROVITZ: We certainly agree that the  
14 disposition of the 1292(B) should not be held for any reason  
15 based upon the bankruptcy court proceedings. The one thing  
16 that I know, Mr. Persky didn't mean to suggest this but I  
17 want the record to be clear, Lear, of course, has denied  
18 liability from the get-go with respect to all of these  
19 claims, it was not investigated by the Government, it has not  
20 been fined by the European Commission, and what the  
21 bankruptcy court is considering right now is simply the  
22 hypothetical case of potential exposure if the plaintiffs  
23 ultimately are able to prove something, but with respect to  
24 Lear, Lear is, as I say, has not been accused by any  
25 Government agency of doing anything wrong and I just wanted

1 the record to be clear.

2 THE COURT: I don't think Mr. Persky meant to admit  
3 liability for you.

4 MR. MAROVITZ: Yeah, yeah. Thank you, Your Honor.

5 THE COURT: Or maybe he did.

6 MR. MAROVITZ: Thank you.

7 MR. PERSKY: Thank you.

8 THE COURT: Okay.

9 MR. SANDERS: Your Honor, Parker Sanders for  
10 Kyungshin-Lear Sales and Engineering.

11 I just wanted to point out we are part of the  
12 stipulation also.

13 THE COURT: Are you?

14 MR. SANDERS: Yes.

15 THE COURT: Okay. Thank you.

16 And KL Sales, same?

17 MR. SANDERS: Yes, ma'am.

18 THE COURT: Okay. The next item is the  
19 clarification of the Court's decision on the motion to  
20 dismiss the IPP complaints. I can't imagine why you need  
21 clarification.

22 MS. FISCHER: Good morning, again, Your Honor.  
23 Michelle Fischer on behalf of the defendants.

24 This is a relatively simple issue, Your Honor. On  
25 page 41 of the Court's opinion regarding the indirect

1 purchaser complaints, the Court set forth a list of the auto  
2 dealer consumer protection claims that it viewed as, quote,  
3 remaining claims. That's at page 41. And included within  
4 that list were claims under the consumer protection laws of  
5 nine states, specifically Hawaii, Illinois, Maine, Nevada,  
6 Oregon, Tennessee, Utah, West Virginia and Wisconsin. The  
7 auto dealers did not, in fact, bring consumer protection  
8 claims under the laws of these nine states so we contacted  
9 counsel for the auto dealers, specifically Mr. Cuneo and  
10 Ms. Romanenko, and they confirmed that fact in writing to us.  
11 So because these claims were accidentally characterized as  
12 remaining claims in the opinion and not dismissed on the last  
13 page of the opinion, we feel there is an ambiguity as to what  
14 remains in the case, so we would ask the Court to clarify  
15 that they are not part of the case.

16 And I didn't discuss this with the auto dealer  
17 counsel, I just found this last night, on pages 22 to 23 of  
18 your opinion you had identified various states where the auto  
19 dealers had expressly stated that they were not bringing  
20 claims under the consumer protection laws under those states,  
21 there were ten states there. All of those states are listed  
22 in your dismissals at the end with the exception of Minnesota  
23 which, again, I think was just an accidental oversight. So  
24 we would also request that the Court clarify that the  
25 Minnesota claims have been dismissed.

1           The bottom line, Your Honor, is that as we  
2 understand it there are four remaining consumer protection  
3 claims for the auto dealers at the end of the day, they are  
4 in Arkansas, California, Florida and South Carolina, and in  
5 the end we are just seeking to make it clear that that is  
6 what remains.

7           THE COURT: Okay. Thank you. Is there any comment  
8 or anybody have any objections? Sounds accurate as to what  
9 was said. I didn't know where you were going with this so I  
10 wasn't prepared obviously to rule, but we will correct that,  
11 we will send out an addendum in writing just so we are sure  
12 that everybody understands what is left and that these are  
13 out.

14           MS. FISCHER: Thank you, Your Honor.

15           THE COURT: Okay. Does that mean we did extra  
16 work? Okay. All right.

17           The next item is coordination with the Department  
18 of Justice. Mr. Fink, do you have something you want to say  
19 on that?

20           MR. FINK: Only to introduce the individual.

21           THE COURT: Mr. Gallagher?

22           MR. FINK: Well, for the direct purchaser  
23 plaintiffs, Jeff Corrigan, who is a partner of Eugene Spector  
24 from the Spector, Roseman, Kodroff & Willis firm, is here  
25 today, and he is the individual that has been focusing on

1 this for the direct purchaser plaintiffs. I think I spoke  
2 out of turn.

3 MR. CORRIGAN: Your Honor, I'm Jeff Corrigan. It  
4 sounded like you might have wanted to speak to Mr. Gallagher  
5 first.

6 MR. FINK: I'm sorry.

7 THE COURT: Yes, I think it all relates to the  
8 government's motion, it comes up in every part, so I think we  
9 should go ahead and do it now. It is your motion,  
10 Mr. Gallagher.

11 MR. GALLAGHER: Yes. Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. GALLAGHER: Paul Gallagher with the antitrust  
14 division of the Department of Justice.

15 With this many people here I feel a bit like I'm  
16 crashing a party that I haven't been invited to.

17 THE COURT: Oh, we have these periodically, they  
18 are fun, you should come.

19 MR. GALLAGHER: Your Honor, I'm here to -- I will  
20 follow your lead in terms of the fact that we just filed our  
21 papers. I don't know whether the Court wants to provide an  
22 opportunity for all of the parties to respond or I can let  
23 you know where we are in terms of discussions between the  
24 defendants and the plaintiffs?

25 THE COURT: All right. Well, I know this was just



1 filed, I just read it I think yesterday, and obviously people  
2 haven't had a chance to respond to this motion, so I don't  
3 know if we can do it today, I'm going to hear what the  
4 defendants have to say, or if we need something more. I also  
5 received your declaration -- or I think it was  
6 Mr. Grundvis' --

7 MR. GALLAGHER: Grundvis, that's correct, Your  
8 Honor.

9 THE COURT: His declaration this morning, and I  
10 briefly reviewed that. I understand where you are coming  
11 from, but I don't know that the defendants have had an  
12 opportunity -- excuse me, the plaintiffs have had an  
13 opportunity to respond.

14 So before you argue let me just ask the plaintiffs  
15 what their feelings are and let's get -- if you can just step  
16 to the side and we will see.

17 MR. WILLIAMS: Good morning, Your Honor.  
18 Steve Williams for the end payors.

19 Myself, Mr. Corrigan and Mr. Cuneo have been  
20 talking with the Justice Department for some time. The  
21 papers were just filed and we understand an order has been  
22 filed but none of our groups have seen the order.

23 THE COURT: Well, the order allows the filing under  
24 seal I think of the affidavit --

25 MR. GALLAGHER: There are two different orders, one

1 was the motion to seal, which Your Honor has granted.

2 THE COURT: Right.

3 MR. GALLAGHER: The second was the proposed order  
4 depending on the Court's decision on the motion to intervene  
5 and the motion for a stay.

6 THE COURT: Okay. That hasn't been entered.

7 MR. WILLIAMS: And we have not seen that order, and  
8 obviously that is -- it is an important order in terms of the  
9 details of the request by the department. I think our view  
10 collectively on the plaintiffs' side, and they will speak for  
11 themselves, is we generally don't oppose -- well, I should  
12 say first we don't oppose the request to intervene. We  
13 generally don't oppose what has been requested in the motion  
14 for the stay but we would like an opportunity to review the  
15 proposed order and then in a very short period from the  
16 end payors' position, within a week, either indicate we agree  
17 to the term of it or propose those few areas where we may  
18 have some disagreement and then perhaps an opportunity to be  
19 heard if we cannot work this out with the Department and with  
20 the defendants, but we think for today's purposes we should  
21 be given that opportunity to review the proposed order and  
22 then to give our comments to that order.

23 THE COURT: All right.

24 MR. CORRIGAN: Thank you, Your Honor.

25 Jeff Corrigan for the direct purchaser plaintiffs.

1 I second mostly what Mr. Williams said. We have  
2 been speaking to Mr. Gallagher for a number of months to try  
3 to make this process as smooth as possible, and as he  
4 indicated in his papers, we generally agree with the proposed  
5 stay but we have not seen the order, as Mr. Williams said.  
6 We would like a brief chance to just look at the order, see  
7 exactly what it sets out and properly respond, but based on  
8 the number of months that we have spent hashing this out we  
9 don't expect it to be much of a process.

10 THE COURT: Okay.

11 MR. CORRIGAN: Thank you, Your Honor.

12 THE COURT: We have one more?

13 MR. CUNEO: Jonathan Cuneo for the auto dealers. I  
14 have nothing to add to what my colleagues said before me.

15 THE COURT: Thank you, Mr. Cuneo. Okay.

16 And as I looked at least one of the orders there  
17 was apparently a little disagreement about six months or a  
18 year. There was a time period disagreement.

19 MR. GALLAGHER: There was. That's one of the few  
20 and the basic differences between plaintiffs' position and  
21 the government's position.

22 First of all, I want to apologize to the Court for  
23 filing as closely to this hearing as we did. We were not  
24 aware until just a week or two ago that this status  
25 conference was occurring. We have been monitoring the civil

1 cases but not super closely because we didn't believe -- we  
2 believed that there were protocols in place that were going  
3 to take care of any concerns that we had, at least with  
4 regard to the initial cases, so it was not an intention to  
5 get this in at the last minute.

6           The counsel for plaintiffs are correct, we have  
7 been talking about this for some time, we have very few  
8 differences but as is always the case once you start to put  
9 pen to paper then, you know, questions come up and that's the  
10 situation with the plaintiffs. I believe also that we will  
11 be able to work out something, we may even be able to provide  
12 a proposed stipulated order to Your Honor. We did not want  
13 to overstep our bounds given that this affects the Court's  
14 docket and could potentially impact the speed that the cases  
15 move forward, we don't think very much, but we wanted to make  
16 sure that we just didn't offer a stipulation without having  
17 an opportunity for the Court to ask questions.

18           THE COURT: All right. Let me just indicate to all  
19 of you, when you are working trying to work this out,  
20 remember we have these conferences and so if you are talking  
21 six months or a year, it could be that maybe we meet again  
22 and add this to the agenda in six months or nine months and  
23 say let's look at where the Government is and how far away  
24 so, you know, it doesn't have to be, you know, an endpoint  
25 order, it could have intermediate steps that might resolve

1 this, so just keep that in mind.

2 MR. GALLAGHER: Right, and one other alternative in  
3 terms of six months versus a year is to give a certain period  
4 of time, either six months or a year, but then to have us,  
5 the government, provide the Court with field updates about  
6 where we are that would enable the Court to determine which  
7 cases should go forward with discovery and which cases should  
8 still be stayed, so we would be happy to do that as well.

9 THE COURT: Okay. So then I guess the answer to  
10 all of that is we are not going to deal with the discovery  
11 dates today because we have to wait for this order and really  
12 the only one ready, that might even come ready, and I don't  
13 know that your order affects it because you talk about pre  
14 and initial products and subsequent products, so the only one  
15 that is going to even be starting or could possibly start  
16 discovery is the initial product, the wire harness case,  
17 so --

18 MR. GALLAGHER: My understanding and one of the  
19 reasons why we -- our concern was increased was we understood  
20 that several months ago the Court in the occupant safety  
21 systems cases had ordered that the same protocol that you had  
22 ordered with regard to wire harnesses and some of those  
23 initial cases would be applied to those OSS cases, which  
24 means that discovery and document production would be  
25 permitted at that time. That's something that we for the

1 reasons stated in our brief and also in the sealed  
2 declaration have concerns about, so that's why we came in at  
3 this point, because we thought it was ripe.

4 THE COURT: Okay. That's true, they are all put on  
5 the same case management orders and protocol but do consider  
6 how far off all of this is. By the time we do motions to  
7 dismiss and then get to answers, I mean, I'm trying to keep a  
8 calendar and I don't know that anything is going to be ready  
9 before -- for discovery for many, many months except for the  
10 wire harness, but we also have the depositions, that was  
11 another issue you raised.

12 MR. GALLAGHER: Correct.

13 THE COURT: And that's something that the  
14 plaintiffs presented because -- I can't remember under what  
15 context but you gave me the schedule of when these defendants  
16 are going to be released and therefore ready for depositions,  
17 so I do think your order will have to specifically take care  
18 of -- have to specifically take care of that because we have  
19 a number of these defendants who are now either out or going  
20 to be out shortly.

21 MR. GALLAGHER: Right. I think one of the other  
22 issues that caused the timing to come up was the fact that  
23 Your Honor has ruled on certain motions to dismiss, and I  
24 believe that some of the initial discovery orders said that  
25 certain depositions could begin after the decisions on the

1 motions to dismiss --

2 THE COURT: That's correct.

3 MR. GALLAGHER: -- so that's another thing.

4 To some extent OSS is timely. To some extent with  
5 regard to other products our request is prophylactic, we want  
6 to get out in front of this to make sure that we are not  
7 chasing and coming in each time a new product, you know, that  
8 there is a plea on it and new civil cases are filed and new  
9 orders are applied to those particular cases, so we are  
10 hoping to get a protocol that can apply to groups of cases as  
11 we have set forth in our briefs.

12 THE COURT: Okay. And when you work out your order  
13 I would like specifically a listing -- I want to know for the  
14 part, when the discovery can start for the part and what part  
15 of discovery, if it is paper discovery or if it is  
16 depositions, et cetera, I want to know that so that I can try  
17 and keep track of the flow of each of these parts basically.

18 MR. GALLAGHER: Very good.

19 THE COURT: Okay.

20 MR. GALLAGHER: Your Honor, I believe our motion to  
21 intervene is unopposed. Would the Court grant that?

22 THE COURT: All right. If you would present an  
23 order the Court would grant your motion to intervene.

24 MR. GALLAGHER: Very good. Thank you, Your Honor.

25 THE COURT: Since you've already argued I don't see

1 any sense in --

2 MR. CHERRY: Your Honor, may I speak?

3 THE COURT: Yes.

4 MR. CHERRY: I'm Steve Cherry with Wilmer Hale. We  
5 represent Denso.

6 THE COURT: Just a minute. There is a microphone  
7 here. Why don't you use that just to be sure the people in  
8 the back can hear you, Mr. Cherry.

9 MR. CHERRY: Okay. Thank you, Your Honor. I just  
10 wanted to make clear that the defendants, you know, we feel  
11 like this obviously impacts us as well and would expect to be  
12 heard on this issue. We have been in contact with  
13 Mr. Gallagher. We don't oppose the motion for a stay as a  
14 matter of principle but we obviously want to see a proposed  
15 order and may have --

16 THE COURT: Well, it will have to be stipulated to  
17 by everybody so that includes the defendants.

18 MR. CHERRY: Thank you, Your Honor.

19 THE COURT: So any number of the defendants  
20 involved you are going to have quite a job just to get the  
21 defendants --

22 MR. GALLAGHER: Right, understood, Your Honor.

23 THE COURT: Okay. Thank you. All right.  
24 Instrument panel cluster?

25 MR. HANSEL: Your Honor, before we turn to



1 instrument panel cluster, one more thing. Greg Hansel for  
2 the direct purchasers.

3 Returning to the deposition of the incarcerated  
4 persons, which was item 1-B on wire harness?

5 THE COURT: Yes.

6 MR. HANSEL: Your Honor addressed that with  
7 Mr. Gallagher briefly. I also wanted to give the Court a  
8 quick update on our discussions with defendants. The  
9 plaintiffs have already filed a stipulation reached with  
10 Furukawa. We have agreed in principle with Yazaki also with  
11 respect to the wire harness case, and we have not fully  
12 executed that stipulation yet but expect to do so in the near  
13 future. That's all with respect to wire harness. I may come  
14 back and briefly touch on this issue with respect to some  
15 other parts.

16 THE COURT: All right. Anything else on the wire  
17 harness?

18 MR. KANNER: There is, Your Honor, just one minor  
19 matter. Good morning, Your Honor. Steve Kanner, one of the  
20 interim co-lead counsel on direct purchaser plaintiffs.

21 The only matter I would add with respect to 1-D is  
22 by way of an overview of what is going on. The defendants  
23 have now produced approximately two and-a-half million  
24 documents to plaintiffs. We have been and continue to be  
25 reviewing those materials, and most current by way of update

1 the direct purchaser plaintiffs recently served our requests  
2 for production and our interrogatories on defendants. The  
3 time for response has not yet taken place as I think these  
4 were only filed in the last week or so. We expect there will  
5 be spirited but cooperative discussions with respect to the  
6 inevitable objections that will come up in the course of  
7 these matters, and we would hope to be able to work it out by  
8 way of a stipulation, and if we can't we will certainly come  
9 to this Court for your direction on how to handle these  
10 issues because now that we are into the  
11 post-motion-to-dismiss phase the request for production  
12 largely relating to transactional data are critical to our  
13 moving the case ahead and being ready at some point in time  
14 for the class certification arguments.

15 And it occurred to me that perhaps if there are  
16 issues with the discovery process, rather than waiting three  
17 months for a hearing that perhaps the Court would entertain  
18 the possibility of a telephonic conference call with limited  
19 representatives from each side on issues that relate to  
20 unsurmountable problems should we run into that.

21 THE COURT: Let me tell you a couple of things.  
22 Certainly I will entertain telephone conferences as long as  
23 you set them up.

24 MR. KANNER: Certainly.

25 THE COURT: But, no, I wouldn't want you to wait if

1 you have discovery problems any differently that any other  
2 case, you have to file your motion or request a conference,  
3 whatever, immediately. No, I do not want you to wait for  
4 something like that, that would make no sense.

5 MR. KANNER: Agree.

6 THE COURT: Okay.

7 MR. KANNER: Thank you very much, Your Honor.

8 THE COURT: Thank you. Defense?

9 MS. SULLIVAN: Good morning, Your Honor.

10 Marguerite Sullivan on behalf of the Sumitomo defendants.

11 The only thing I would add to what Mr. Kanner just  
12 said is that we do anticipate that we will attempt to reach  
13 an agreement on a discovery schedule so that we can lay out  
14 the schedule of events and discovery going forward. If we  
15 can't reach an agreement with the plaintiffs we'll raise that  
16 with Your Honor.

17 THE COURT: All right. Good. Thank you. Okay.  
18 Instrument panel clusters, direct purchasers?

19 MR. FINK: Nothing interesting on service that I'm  
20 aware of, Your Honor.

21 THE COURT: The service is all done, right? The  
22 service is complete on that one?

23 MR. FINK: Yes.

24 THE COURT: All right. And how about your motion  
25 to dismiss, the defendants' replies are due July 15th?

1 MR. FINK: Yes, and I don't think there is anything  
2 controversial about that. I would look to the jury.

3 THE COURT: Okay. Oh, there is an issue on the 12  
4 point, we've gotten a number of calls on that.

5 MR. FINK: That's -- Your Honor, we were --

6 THE COURT: That's funny because I was at a meeting  
7 when we were discussing going to the 14 point and adopting  
8 that and it didn't seem like any big thing, and the next  
9 thing I know I'm getting all of these calls.

10 Because of the nature of this case and, you know,  
11 working out the number of pages and all of that, I see no  
12 problem with continuing with the 12 point in the same number  
13 of pages, okay, so that would be the same for all of the  
14 parts. I don't want any part to say they got less pages than  
15 another part. So you will all be the same by keeping with  
16 the 12 point. I don't think that would cause -- and, Bernie,  
17 we need to note this for the Clerk's Office, that they don't  
18 reject these pleadings because they are not the right size.  
19 Okay. So that's what we will do for everybody, every part,  
20 everything from now on we will keep the 12 point. Okay.

21 MR. FINK: Thank you, Your Honor. That was what I  
22 prepared for for weeks to talk about.

23 THE COURT: Oh, so sorry.

24 MR. FINK: But I will be okay.

25 THE COURT: Okay.

1 MR. FINK: For the hearing date, which is more  
2 complex, I will defer to Steve Kanner.

3 THE COURT: I hate to say what that cost as I did  
4 review the attorney fees. I'm not happy, but we will talk  
5 about that later. Okay.

6 MR. FINK: Thank you, Your Honor. I will take some  
7 of my weeks of work on that off of the bill.

8 THE COURT: Okay.

9 MR. KANNER: Good morning, again, Your Honor.  
10 Steve Kanner.

11 THE COURT: Mr. Kanner.

12 MR. KANNER: With respect to the hearing dates, we  
13 listened with interest as Your Honor perhaps previewed your  
14 thinking with respect to whether or not we need oral argument  
15 on the motions to dismiss. I conferred briefly with my  
16 colleagues, and since many of the arguments are going to be  
17 typical of what we saw before and Your Honor has spent an  
18 extraordinary amount of time with those motions, thoroughly  
19 analyzing them and ruling on them, and in the interest of the  
20 amount of time that we spent preparing for those oral  
21 arguments, we are prepared to accept Your Honor's  
22 determination if you so indicate to hear those -- or to have  
23 those motions ruled on on the papers.

24 Alternatively, if Your Honor is going to determine  
25 that you would like to have oral argument on certain

1 questions, I would also make a suggestion that will help  
2 economize time and judicial resources, that with respect to  
3 both instrument panel clusters, and if I can jump ahead to  
4 heater control panels, we have already determined that with  
5 respect to instrument panel clusters the defendants' briefing  
6 should be done on July 15th. And if I can, Your Honor, look  
7 at heater control panels, the defendants' briefs are to be  
8 completed -- the reply briefs on October 2nd.

9 Now, putting that to the side, we have typically  
10 scheduled conferences every three months which would suggest  
11 that the next one be sometime in October. It seems to me if  
12 we can do both of those sometime in October it is a great  
13 savings to all parties, certainly defendants and plaintiffs,  
14 and, again, with an eye towards judicial resources we might  
15 be able to take that into consideration.

16 THE COURT: Okay. Let met hear defendants'  
17 response. Go ahead.

18 MR. VICTOR: Good morning, Your Honor. Paul Victor  
19 for the Nippon Seiki defendants.

20 THE COURT: Good morning.

21 MR. VICTOR: With respect to the comments that  
22 Mr. Kanner made concerning the hearing, we take issue with  
23 that. These cases are not all the same; the parties are  
24 different, the charges are different, and the plaintiffs, of  
25 course, would like to treat this all as one similar part.

1 Well, just because the MDL put these cases together doesn't  
2 mean that we are not entitled to our rights, which include  
3 the rights to argue our motions to dismiss. We think there  
4 are differences, we'll point out the differences, we are not  
5 involved in wire harnesses, we are involved with instrument  
6 panel clusters, and we feel that we have the right to present  
7 our position to the Court directly as a matter of due  
8 process, so we do take issue with that and we do wish to have  
9 an oral argument with respect to our motions to dismiss.

10 THE COURT: Okay.

11 MS. STORK: Good morning, Your Honor. Anita Stork  
12 on behalf of the Alps defendant in the heater control panel  
13 cases.

14 I would echo everything that was just said, that  
15 the defendants do want their right to come in and argue their  
16 motions, the collective motions, because we believe the  
17 issues are different. There also are some defendants in some  
18 of these case, such as my client, Alps, that has filed a  
19 separate motion to dismiss and is differently situated than  
20 some of the other defendants, so we would strongly urge the  
21 Court to allow the hearings to go forward.

22 THE COURT: Okay. Let me --

23 MR. DAMRELL: If I may comment?

24 THE COURT: Yes.

25 MR. DAMRELL: Frank Damrell on behalf of the

1 end payors.

2           Your Honor, we have always referred to the wire  
3 harness case as a template and that's to suggest that the  
4 order is a template because there are going to be different  
5 issues in different cases, but in those cases where the same  
6 issue arises and the Court has ruled while the defendants  
7 have a right to argue the Court can certainly exercise its  
8 discretion in terms of rulings that it has made, it is not  
9 the law of the case, these are different cases, but the  
10 rulings do mirror -- will undoubtedly mirror the findings  
11 that the Court made in the wire harness case, and I think it  
12 would be very helpful from a standpoint of the multiple  
13 motions that are going to be filed that the Court consider  
14 giving us guidance in narrowing those issues particularly if  
15 counsel is going to repeat and rebrief and reargue matters  
16 that the Court has already ruled upon. That is pretty  
17 critical in an MDL case, and I think this is the advantage of  
18 an MDL case with a judge that can make that ruling or rulings  
19 in advance of other motions, and those rulings I think should  
20 control, so to the extent that you can provide us guidance in  
21 that respect would be very helpful.

22           THE COURT: Well, let me just say this, let me do  
23 the easy part first, if we have oral argument it will be at  
24 the next status conference so you don't have to come in  
25 twice. I in advance took the liberty of looking at dates.



1     October, because we do have that MDL -- I have an MDL,  
2     whatever it is called, that conference which I attended last  
3     year and I would like to attend this year, and I decided to  
4     put off our meeting until after that in case I can pick up  
5     any hints as to how to be most efficient in this case.

6             I looked at November 13th. I don't know if you --  
7     if there is anything else significant happening that day that  
8     might prevent you from attending. Please let me know.  
9     Anybody offhand know of anything?

10            (No response.)

11            MR. KANNER: Your Honor, from the direct purchaser  
12     perspective, we don't have a problem with that date.

13            THE COURT: All right. It looks like that's not a  
14     big problem for anybody so let's schedule it for  
15     November 13th. I would suggest this -- it will be at 11:00,  
16     just as this was. We will -- what did we do last time? We  
17     did our status conference and then motions, I think, and we  
18     will do that so those of you not involved could leave. It's  
19     starting at 11:00 so it is a little later, so depending upon  
20     how long the status conference goes it might be, you know,  
21     after lunch, I don't know, but we will play it by ear.

22            I agree with Mr. Damrell, it would be helpful to  
23     have some kind of template if we could do it, but I recognize  
24     at this point that these parts are different and they may  
25     very well have different issues, I don't know, I fully intend

1 to give every defendant its day in court, of course, for the  
2 individual parts. So I can't rule on this -- I mean, I can't  
3 say that I can have a template, I don't know. I do expect,  
4 of course, that some of the issues will be the same or  
5 ultimately come up the same but you also have all of the  
6 pleadings, all of the subsequent parts have all of the  
7 pleadings, so you know how I have ruled. I may be wrong but  
8 I will tell you that I'm consistent so, you know, accept it  
9 and get over it, and if that's how I ruled that's how I ruled  
10 and that's all I can tell you. So we do plan and try to be  
11 as consistent as we can be but if you have something that is  
12 new then you raise that.

13 It may be that you will have multiple -- probably  
14 it will be so that you have multiple issues and some of the  
15 issues I have ruled on and then I won't hear oral argument on  
16 these issues, and there might be new issues that I haven't  
17 ruled on that I would hear oral argument. So if you want  
18 oral argument just mention it in your brief, you know, a new  
19 issue, want the opportunity to argue, so we know that. You  
20 know, oral argument, as you know, in Federal court isn't  
21 always allowed on dispositive motions. It so happens that I  
22 always do allow it so being consistent I will allow you to  
23 argue if it is new, so we will see, but we will plan those  
24 arguments if we have them, and I'm anticipating that we will,  
25 on -- what did I say? November 13th. Okay. That will be

1 both for the instrument panel and heater control. I know we  
2 didn't get there yet but they are both going to be about  
3 ready about the same time so we will do both of the  
4 arguments. Okay. Any comments or any questions on that?

5 (No response.)

6 THE COURT: All right. The next issue is the  
7 stipulations between plaintiffs and defendants regarding the  
8 depositions. Okay.

9 MR. HANSEL: Greg Hansel, again, Your Honor.

10 We have the same agreement in principle with Yazaki  
11 in the instrument panel clusters which we expect to sign in  
12 the near future.

13 THE COURT: Okay. And whatever you are going to do  
14 with the Government on depositions I think that's probably  
15 the next thing that you would coordinate that.

16 MR. HANSEL: I believe that -- well, I don't want  
17 to speak, I will let Jeff Corrigan address the DOJ situation.

18 THE COURT: Okay.

19 MR. CORRIGAN: Your Honor, I think, as before, we  
20 will have to see what the order says but we are largely -- we  
21 largely agree with the motion that has been filed. We will  
22 take a look at the order and get back to the Court very  
23 shortly on that.

24 THE COURT: Okay.

25 MR. CORRIGAN: Thank you.

1 THE COURT: All right. Fuel senders, Mr. Hansel?

2 MR. HANSEL: Greg Hansel, again, Your Honor.

3 On fuel senders, a quick update on service. The  
4 direct purchaser plaintiffs have served Yazaki.

5 THE COURT: All right. And on the fuel senders --  
6 let me just see here. We have some dates on the motions to  
7 dismiss on the fuel senders, they are due August 16th, these  
8 dates are still good. Okay. Response is October 18th, and  
9 reply is December 5th.

10 And I will tell you -- oh, there is a note that we  
11 will continue with the 12 point.

12 I have randomly with some thought selected  
13 February 12th as the date for our next status conference so  
14 that will be two status conferences down, and the oral  
15 argument, if any, on fuel senders. Does that date sound  
16 reasonable? Anybody have anything they know about on that  
17 date?

18 MR. KANNER: It is fine for direct purchaser  
19 plaintiffs. Your Honor, would that be an 11:00 date too?

20 THE COURT: Yes. I think we agreed to have these  
21 at 11:00 for transportation purposes.

22 MS. FISCHER: Is that a Wednesday as well?

23 THE COURT: Pardon me?

24 MS. FISCHER: Is that a Wednesday as well?

25 THE COURT: Yes. Okay. So we will set that.

1           Heater control panels, for the auto dealers, Alps  
2 hasn't been served? Who is speaking on --

3           MS. ROMANENKO: Your Honor, as far as we know Alps  
4 has not yet been served. Hague service is in process for  
5 them.

6           THE COURT: But they have been served by the  
7 end payors?

8           MS. SALZMAN: Hollis Salzman, for the end payors.  
9 That's correct.

10          THE COURT: And so let me just ask again, it is  
11 just because of the Hague process that it is delayed?

12          MS. ROMANENKO: Correct.

13          THE COURT: Okay. And we have already talked about  
14 hearing dates for November 13th on this. Okay. The  
15 depositions, Mr. Hansel, the same?

16          MR. HANSEL: Thank you, Your Honor. Yes. We have  
17 reached an agreement in principle with Denso with respect to  
18 heater control panels, and we have not signed that yet but  
19 expect to do so soon.

20          THE COURT: Okay. And, again, that will be  
21 coordinated with the discovery issue the DOJ has?

22          MR. HANSEL: Yes.

23          THE COURT: Okay. All right. On the bearings,  
24 okay, it is not on here but I have the reply briefs due  
25 March 25th of 2014. I've looked at somebody's order, I have

1 to write this all down because I don't remember it, but  
2 assuming that's true the motions to dismiss aren't due until  
3 December 2nd so I'm assuming that is true, I have not set  
4 another date, I think it is a little bit too far, but  
5 hopefully we can keep this scheduling deadline where the  
6 replies would be due by March 25th because that's quite a  
7 ways away right now. Okay. And the discovery coordination  
8 with DOJ, same thing?

9 MR. FINK: The same thing.

10 THE COURT: All right. Occupant safety systems, I  
11 guess we are waiting on the Hague on that too; is that  
12 correct?

13 MS. SALZMAN: Your Honor, Hollis Salzman.

14 I was just notified today that for the end payor  
15 cases we are fully served now via the Hague.

16 THE COURT: Oh, okay. All right. The next item is  
17 the pleadings, and plaintiffs' consolidated amended complaint  
18 on that is due July 3rd. Is there any problem with that date  
19 on the occupant safety?

20 (No response.)

21 THE COURT: No. Okay. I'm not sure what this is,  
22 direct purchaser plaintiffs wish to address necessity of  
23 translation. You mean we don't have translation resolved by  
24 now?

25 MR. FINK: Well, we do with respect to the original

1 | complaints, and this is a situation that involves amended  
2 | complaints and we are trying to work through an agreement  
3 | with the defense, and some of the defendants have already  
4 | agreed, we are trying to avoid what we think is an  
5 | unnecessary translation, but we will work it through with the  
6 | defendants. Other than to have this opportunity to chat with  
7 | the Court we don't need any involvement of the Court.

8 |           THE COURT: Okay. All right. Then the defendants'  
9 | motions to dismiss on this part, the occupant safety, are due  
10 | October 21st, and that date is still a good date. Okay. And  
11 | we will continue with the 12 point, and we have the same  
12 | issue with the Department of Justice so -- and the  
13 | alternators, we are just basically in service right now; is  
14 | that correct? Any problems --

15 |           MS. SALZMAN: That's correct, Your Honor.  
16 | Hollis Salzman.

17 |           MS. ROMANENKO: Correct for us as well, no  
18 | problems.

19 |           THE COURT: All right. Let's do the rest of these.  
20 | The anti-vibration, the windshield wiper, radiators,  
21 | starters, lamps, is there anything that I need to know  
22 | about -- Counsel?

23 |           MS. ROMANENKO: Your Honor, the dealership  
24 | plaintiffs would like to notify the Court, we have now filed  
25 | our lamps complaint. It has been assigned to Judge O'Meara,

1 but we have identified it as related to the end payors' lamps  
2 case in this MDL, so we believe it should be transferred to  
3 Your Honor.

4 THE COURT: When did you file that?

5 MS. ROMANENKO: Yesterday.

6 THE COURT: Oh, okay. Molly, if you will note that  
7 so we can call Judge O'Meara. Okay. Thank you.

8 We have had a number of complaints filed, we are  
9 trying to get them in faster. You know, sometimes the  
10 courtrooms it is a little bit longer, and we are just trying  
11 to pull them in so we don't miss anybody in our  
12 notifications. All right.

13 Dates for the next status conference, we already  
14 have the next two, November 13th and February 12th, both  
15 Wednesdays and both at 11:00. Again, the hearings on the  
16 motions to dismiss will be at the same time.

17 MR. CUNEO: Those hearings I think at the next  
18 status conference will be at 11:00?

19 THE COURT: Yes.

20 MR. CUNEO: The status conference, argument on two  
21 motions to dismiss?

22 THE COURT: Correct.

23 MR. CUNEO: Would it be the Court's intention to  
24 complete it in one day?

25 THE COURT: It is my intention to complete it in



1 one day. If we do not, it would continue over the next  
2 morning.

3 MR. CUNEO: Thank you.

4 THE COURT: Thank you for bringing that up. Yes.  
5 Since I don't know what is involved and how many issues, I  
6 can't tell you how long it would be, but that's what I would  
7 anticipate.

8 MR. BARNES: Your Honor, Donald Barnes for the GS  
9 Electech defendants.

10 There may be another motion filed by us in the  
11 direct purchaser suits. We were just sued last night so we  
12 haven't seen the complaint yet, so I don't want the Court to  
13 think that you are only going to deal with two motions, there  
14 may be a third.

15 THE COURT: I would not be surprised, it's all  
16 right.

17 MR. BARNES: Thank you, Your Honor.

18 THE COURT: Okay. All I'm saying is whatever  
19 motions are ready at that time will be heard that day, if we  
20 can't complete them that day they will be heard the next  
21 morning. Okay.

22 All right. Now, I just wanted to bring up the  
23 State of Florida. Is there -- is the AG --

24 MR. SLEMP: Your Honor, good afternoon.  
25 Greg Slemp, assistant attorney general for the Florida

1 Attorney General's Office on behalf of the State of Florida.

2 We have filed an instrument panel cluster case  
3 against three defendants, Nippon Seiki and two of its  
4 subsidiaries. We filed that back in May and just recently a  
5 couple weeks ago we were transferred into the MDL, so here we  
6 are.

7 THE COURT: You are limiting yourself -- I  
8 shouldn't say it that way. You are on the instrument panel  
9 cases only, is that the only thing?

10 MR. SLEMP: Yes, and at this time --

11 THE COURT: What does this mean, it is for all the  
12 people in the State of Florida?

13 MR. SLEMP: We have filed on behalf of consumers,  
14 government state agencies which includes municipalities and  
15 counties, and we also have claims for civil penalties.

16 THE COURT: I guess what I'm wondering, this is  
17 kind of like a separate category here, we have got -- how do  
18 we categorize you as a plaintiff? You are not --

19 MR. SLEMP: Well, Your Honor, I think we're --

20 THE COURT: I don't know. I don't know what to do.  
21 Are we going to have one of these from every state?

22 MR. SLEMP: To my knowledge, I don't know at this  
23 point. I wouldn't anticipate it but I can't speak for what  
24 other states might do. At this time I think we are most  
25 closely aligned with the end payor group.

1 THE COURT: The end payor group?

2 MR. SLEMP: But we do have claims for civil  
3 penalties which does distinguish us from the end payors, but  
4 it is our understanding that the case management orders will  
5 be filed in our case as well.

6 THE COURT: I would assume they would be but I want  
7 to know if any of the other plaintiffs have any other  
8 comments on this. This one kind of surprised me.

9 MR. WILLIAMS: Your Honor, Steve Williams on behalf  
10 of the end payors.

11 I think the prime comment for us is we are doing  
12 everything we can to work cooperatively with the Florida  
13 attorney general to eliminate any duplication or any  
14 inefficiencies that may be caused at this early point in the  
15 case, so really the primary point for us is we are working  
16 together, we communicate regularly to make sure that for the  
17 Court and the parties this is done in the most efficient way.  
18 And then in terms of how far the cases play out, I think they  
19 will fold in for the most part in terms of discovery and in  
20 terms of how the pleadings are resolved while they assert the  
21 statutory and the claims on behalf of the sovereign that they  
22 have that are unique from the claims that we have.

23 THE COURT: Okay. And, Mr. Slemp, I think, yes,  
24 you really have to work this coordination because I don't  
25 know, I have received attorney fees, which are confidential

1 so I'm not going into that, but I want to go into the hours,  
2 there is apparently an extraordinary number of hours. I  
3 mean, I don't know if you know what you are getting into, I  
4 guess, and this could be coordinated because many of your  
5 plaintiffs are the same plaintiffs in the -- well, I assume  
6 they are all almost the same plaintiffs in the other cases,  
7 so I do encourage this coordination of this effort.

8 MR. SLEMP: Yes, Your Honor. We fully intend to  
9 coordinate our effort to the end payor group.

10 THE COURT: Okay. Are you anticipating that there  
11 are other states or is this something that you are not yet  
12 free to discuss?

13 MR. SLEMP: I'm not free to discuss at this time.

14 THE COURT: Okay. All right.

15 MR. SLEMP: Thank you, Your Honor.

16 THE COURT: Thank you. After all of this time I'm  
17 still not able to grasp where we are going here in the end if  
18 we even get by subsequent summary judgment motions, but it is  
19 like as those parts continue to come up -- maybe I should ask  
20 plaintiffs this: Are you -- in terms of a resolution of this  
21 case, what are your thoughts? We need to wait until we have  
22 all of our parts? I mean, we only have one car obviously,  
23 you know, with all of its parts. I just want a heads up if  
24 you could give me something as to where this is going?

25 MR. KOHN: May it please the Court, Joseph Kohn,

1 Kohn, Swift & Graf, one of the direct purchaser counsels.

2           Your Honor, we, of course, as plaintiffs are always  
3 interested in talking about resolution. We don't consider it  
4 a sign of strength if somebody doesn't want to talk about it,  
5 we don't consider it a sign of weakness if you do. Each of  
6 these parts are, from our perspective as the direct  
7 purchasers, are separate cases, part of the overall MDL.  
8 They are -- in some cases the classes are slightly different.  
9 There are some direct purchasers that buy wire harnesses but  
10 do not buy wipers, and with respect to those cases we think  
11 each of those cases to a certain extent rises or falls on  
12 their own merits, and settlements with defendants that are  
13 only in those cases would be handled as any settlement in  
14 class-action litigation would occur.

15           You have certain defendants that make products and  
16 there has been a series of cases, for example, in the  
17 chemical industry, some were brought together in one court,  
18 some were MDL'ed into different courts, some of those  
19 defendants overlapped. BASF was a defendant in a number of  
20 those, Akzo Nobel. Sometimes those cases then were settled  
21 seriatim. So that is a model that would exist with respect  
22 to, let's say, defendant A makes product X, that case  
23 would -- that litigation could be settled partially or fully.  
24 If a defendant A makes products X, Y and Z, defendant A could  
25 settle product X but not Y, they may have defenses on

1 product Y.

2 THE COURT: If a defendant settles a product for X  
3 dollars --

4 MR. KOHN: Yes.

5 THE COURT: -- is this X dollars put into a fund or  
6 do you create an entity until all of these defendants are  
7 resolved?

8 MR. KOHN: As to each particular product part it  
9 goes into a fund. Sometimes there is an interim distribution  
10 to class members, it becomes sort of an issue of efficiency.  
11 If there is a sufficient amount of money in that fund but  
12 there are still other defendants that want to litigate for  
13 the next ten years, sometimes we will propose that there be a  
14 distribution to the class so they get some recovery at that  
15 point.

16 Our direct purchaser classes do have some  
17 difference from the indirect purchasers who I will not speak  
18 for. To the extent that the indirect end payors are  
19 consumers who buy an automobile their class is different than  
20 our classes of direct purchasers. They may have some  
21 proposals that would be different from that in terms of any  
22 individual automobile buyer who has all of these claims  
23 together.

24 THE COURT: Then when -- I don't know what the  
25 hours you are putting toward experts, what those experts are

1 doing right now or what information you are seeking from  
2 them, but I take it also that in the end, I mean, we know we  
3 have some parts because we have pleas, so in this case we  
4 know that we have some defendants who are going to be  
5 responsible, liable. The question of damages is did that  
6 make a difference in the cost of the car? Is that something  
7 that you wait until the end, are you working on that because  
8 it seems to me to be a rather big issue?

9 MR. KOHN: For the direct purchasers it is a  
10 question whether it made a difference with respect to that  
11 product.

12 THE COURT: That product, yes.

13 MR. KOHN: With the end payors and the dealers,  
14 they have different issues with respect to how that flowed  
15 through or cascaded through the economy with respect to those  
16 products but, yes, the experts, that's part of where some of  
17 discovery discussions early on about the transactional data,  
18 those materials that we will now be moving ahead with, those  
19 are the numbers that experts will crunch as to what were the  
20 input costs, what is the cost that we paid for the product,  
21 what is the cost for the automobile, and those are both part  
22 of a class certification analysis at one level and then  
23 ultimately is our damage proof with a claim, the number, if  
24 you will, the plaintiffs would put on the board against which  
25 a settlement negotiation would take place.

1           THE COURT: All right. I ask these questions only  
2 because I don't want to ever miss any opportunity to begin  
3 discussions on resolution of this case, and I say that -- I  
4 mean, you plaintiffs' attorneys are all very experienced so I  
5 say that as the Court is open to that.

6           MR. KOHN: And as are the defense counsel, and I  
7 don't think we are speaking out of school, there was some  
8 mention at the last hearing about discussions, that there has  
9 been discussions among experienced lawyers who know each  
10 other. At some point it may be appropriate for the Court to  
11 have a conference perhaps that is devoted to a Rule 16  
12 conference to explore issues. We think that might be  
13 premature as we stand here today but hopefully in the next  
14 series of months that it may not be -- it may not be the  
15 case.

16           And, again, to use the word template, we think  
17 perhaps if some of these discussions do reach fruition there  
18 would again be a template with respect to that process of are  
19 there settlements that relate to all three plaintiffs'  
20 groups, are there settlements with individual plaintiffs'  
21 groups, are there settlements of cross products, are they  
22 narrow, and I think that would be evident as that process  
23 moves forward.

24           THE COURT: Okay.

25           MR. KOHN: Thank you, Your Honor.



1 THE COURT: Counsel?

2 MR. BURNS: Your Honor, just briefly, this is  
3 Warren Burns for the end payor plaintiffs.

4 To touch on some of the issues that my colleague  
5 referred to, since the beginning I don't think it is any  
6 secret here that we on the end payor side and also more  
7 broadly on the indirect side have been working with experts  
8 to look at the particular issues that apply to our classes of  
9 plaintiffs in these cases, so this is something that has been  
10 on our mind since the beginning and are pursuing diligently  
11 and will continue to do so going forward.

12 I also would echo that as we look at resolution of  
13 parts short of trial we are open and amenable to looking at  
14 broader resolutions that encompass a number of parts and  
15 various vehicles. There are obviously complexities involved  
16 in this case and we will have to address that on a  
17 defendant-by-defendant basis, but it is something that is  
18 fresh in our minds and we are pursuing.

19 THE COURT: Okay.

20 MR. VICTOR: It's Paul Victor, again, Your Honor.

21 THE COURT: You're not coming up here to make a  
22 demand, are you?

23 MR. VICTOR: No, no, of course not.

24 THE COURT: Okay.

25 MR. VICTOR: I just want to point out again that as

1 far as my clients are concerned each of these cases involve  
2 separate parts, each of these classes are going to have to  
3 try to get certified separately, it is not going to happen  
4 together, it is not going to happen for all of these cases.  
5 And as you pointed out, an interesting question is whether or  
6 not some of this alleged overcharge was passed on, that's an  
7 issue as to what about a purchaser of an automobile, did it  
8 make a difference in the price of the automobile, there is a  
9 lot of issues here, this is not going to be a big lump sum.  
10 Maybe some of the defendants who have multiple parts want to  
11 do something different but those defendants are -- at least  
12 my clients who have individual parts want each of these  
13 things handled separately.

14 THE COURT: Okay. I sense you're worried that you  
15 are going to be lumped together with I don't know who but,  
16 you know, I can assure you every part will be handled  
17 separately if that's what is called for.

18 MR. VICTOR: Thank you, Your Honor.

19 THE COURT: Is there anything else?

20 MR. CUNEO: Just to say two things. First is that  
21 dealers are also working with experts in order to make the  
22 kind of determinations that Your Honor was discussing. And  
23 the second, looking right at the jury box, I have a phone  
24 number connected to the outside world, I have an e-mail  
25 address and we are open for business. Thank you.

1           THE COURT: All right. We have one last issue,  
2       which is the attorney fees. Okay. Let's hear what you have  
3       to say.

4           The defendants should know that I did receive -- I  
5       received confidential memos so I don't know that they know  
6       but we talked about it last time that I asked you for --

7           MR. KANNER: Your Honor, Steve Kanner, from the  
8       Freed, Kanner, London & Millen firm again speaking as interim  
9       co-lead for the direct purchaser plaintiffs.

10          The defendants are aware and have received a copy  
11       of the cover letter which was sent to this Court on June 18th  
12       of 2013 which described the submission that we made to this  
13       Court without, of course, giving them any information with  
14       respect to that submission because it is obviously  
15       attorney-client privilege information.

16          I'm happy to field any questions, but I would urge  
17       this Court if there are specific questions I'm happy to  
18       answer them in camera because, again, specifics would  
19       undoubtedly open the door towards a view of what it is we are  
20       doing and how we are doing it.

21          As a general matter, Your Honor, I can tell this  
22       Court that an extraordinary amount of work goes in the first  
23       case. The seed -- the spade work is extraordinary and the  
24       efforts are extraordinary, and I think just from seeing the  
25       briefing and the motion to dismiss the time required was

1 substantial. And we continue to report to Your Honor each  
2 three months, every status conference we are here, on the  
3 amount of documents that have been produced to us. We are  
4 not complaining about it by any stretch, it is -- the  
5 documents have been fruitful, we think they are beneficial to  
6 the prosecution of this case, and if anything we remain  
7 confident and perhaps even more so with respect to the basis  
8 for our cause of action.

9 Now, without going into an argument of the case,  
10 that's not my purpose to be here, I can tell you that as we  
11 complete the review of time, the amount of time being put in  
12 is obviously going to be reduced dramatically but, again,  
13 with respect to specific questions we are happy to answer  
14 those in a private situation, Your Honor.

15 THE COURT: Well, I don't have specific questions  
16 that I need to bring up at this point. I do have concerns  
17 because as a practical matter, and this isn't so different  
18 from any other case, it is hard to get a grasp on attorney  
19 fees. You could tell me that you have 100 hours to prepare  
20 something, obviously when we get to pleadings I have a better  
21 idea of how much time because I can see it, but I don't  
22 know -- I like your categories, I like the way the categories  
23 have been laid out, you know, but I don't know. I'm pulling  
24 numbers out of the air here, you know, a thousand hours to  
25 find defendants, find plaintiffs, you know, I don't know if

1 that's a reasonable number, and that's not the numbers, I  
2 don't want to mislead anybody here or reveal anything here,  
3 but I don't know if these things are reasonable, but I'm  
4 going to be following it a little more closely and I may be  
5 asking you for some more detail in the hours that you  
6 submitted as to billing records.

7 MR. KANNER: We are happy and will be responsive to  
8 any requests along that line. The form we used for Your  
9 Honor is a form which is one which -- is one we typically use  
10 in these cases, the format, the category breakdowns are the  
11 ones most typically adhered to.

12 And we would also urge the Court to remember that's  
13 almost two years worth of time from the time we began to  
14 research this case and it needs to be perhaps viewed in that  
15 perspective. But, again, to the extent that there are any  
16 specific questions, concerns, I'm happy to address them in  
17 the appropriate forum, and on behalf of plaintiffs' counsel  
18 we are very much aware of the need to monitor it tightly. As  
19 the case progresses it is easier to do so because you have a  
20 better handle on what is going on.

21 THE COURT: I would indicate if I do request  
22 anything else I'm going to wait and see what the next three  
23 months because it is going to be a smaller billing period,  
24 right?

25 MR. KANNER: That's correct.

1 THE COURT: Well, you actually ended -- I can't  
2 remember, was that the end of March?

3 MR. KANNER: It was time through March 31st.

4 THE COURT: Yeah, so --

5 MR. KANNER: Would you like --

6 THE COURT: -- if you would submit something to me  
7 through the end of June, if you would do that by the end of  
8 July, would that be --

9 MR. KANNER: I think we can do that.

10 THE COURT: Well, wait a minute, this is already  
11 the middle of July, but as soon as you can.

12 MR. KANNER: I don't think there is a problem  
13 putting it together for you some time in August, if that's  
14 okay?

15 THE COURT: That would be fine. And if I have any  
16 questions, if I need to contact anybody, you know, I worry  
17 about ex-parte communications so I would let defendants know  
18 somehow we would do a notice that they would know that I  
19 would be contacting you only regarding the attorney fees,  
20 which are confidential, so you know that would be happening  
21 if it should happen, and we will go with that.

22 MR. KANNER: Very well, Your Honor.

23 THE COURT: Is that satisfactory with the  
24 defendants? I don't know how else to do this because we have  
25 to keep it confidential. Okay. All right. Is there

1 anything else, Mr. Fink?

2 MR. FINK: If I may, Your Honor, just one point  
3 with respect to the fees. Ultimately as the Court is well  
4 aware the Court will have to approve any fee but it is  
5 extremely important to understand in the context of an  
6 antitrust class action the most common fee application, and  
7 of course I can't speak to any application that is not  
8 currently pending, but the most common fee application would  
9 be seeking a percentage of the recovery. And all of this  
10 loadstar data, what we are calling our attorney fees, all of  
11 that data is often referred to by the court or looked to by  
12 the court as a crosscheck against the reasonableness of the  
13 fee, but it doesn't drive the fee so it isn't that each time  
14 somebody puts down one hour for review of documents that that  
15 means the Court is being asked to award an amount for that  
16 review of the documents but rather the Court will have a  
17 broader understanding, of course, of the case at that point,  
18 the Court will be advised at that point as to all the work  
19 related to the case and why it is the percentage recovery  
20 would make sense but generally in the 6th Circuit plaintiffs  
21 seek a percentage of the recovery.

22 THE COURT: Thank you.

23 MR. FINK: Thank you.

24 MR. TUBACK: Your Honor, Michael Tuback on behalf  
25 of the Leoni defendants.

1 I haven't conferred with any of my colleagues  
2 because the issue of the meeting relating to attorney fees  
3 just came up in court today, but we -- I would at least have  
4 some concern about the Court meeting with the plaintiffs'  
5 counsel alone to talk about the bills that they have  
6 submitted or the hours that they put in only because I think  
7 it is very difficult to talk about the reasonableness of the  
8 hours expended so far without also getting into the merits of  
9 the case, and I know the Court wouldn't entertain motions or  
10 arguments specifically on issues but it is difficult to talk  
11 about those issues without also getting into what they are  
12 doing and the merits of the case.

13 THE COURT: I agree it -- mostly if I have  
14 questions would be questions in writing as opposed to like  
15 meeting with them in a conference.

16 MR. TUBACK: I appreciate that, Your Honor. Thank  
17 you.

18 THE COURT: And I don't have questions now, and I  
19 would say to the plaintiffs I'm not flyspecking, you know,  
20 you spent two hours reviewing a memo, I'm not doing that.

21 MR. KANNER: I understand, Your Honor. I would  
22 also tell the Court, and some of my colleagues were in that  
23 case, in the filters antitrust litigation the judge met with  
24 plaintiffs on two occasions, early in the case to give his  
25 thoughts about how it should be maintained, and once in the



1 case as things progressed just again to get -- to satisfy his  
2 concerns about certain issues and we addressed them, and  
3 certainly we were able to do that without imposing any  
4 argument or anything of any consequence other than a direct  
5 response to those questions. If the Court feels it is  
6 necessary we are certainly willing to do so, as I said  
7 before.

8 THE COURT: All right. If I do I will let -- I  
9 mean, I will let the defendants know too, but at this point I  
10 don't think that it will be necessary and I would hope that  
11 we could do it in writing just so we have a record if ever  
12 there is any question.

13 Anything else? All right. Thank you very much.  
14 We will see you in November. Have a good summer and fall.

15 THE CASE MANAGER: All rise. Court is adjourned.

16 (Proceedings concluded at 12:26 p.m.)

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*CERTIFICATION*

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of MDL 12-md-02311 on Wednesday, July 10, 2013.

s/Robert L. Smith  
Robert L. Smith, RPR, CSR 5098  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: 07/31/2013  
Detroit, Michigan